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January 8, 1979

DEPARTMENT OF STATE A/CDC/MR
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ENDORSE EXISTING MARKINGS ☐
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BAR:JGH:amc

Juan David Morgan, Esq.
Morgan y Morgan
Apartado 1824
Panama 1, PANAMA

Re: Identification, Immobilization and Possible Recovery of Peoples' Temple Assets in Panama

Dear Mr. Morgan:

This will record and confirm the several matters which we discussed during my visit to your office on December 27, 1978, and list the issues on which the Department of Justice seeks to solicit your advice.

1. You advised me that the general Panamanian banking law (Cabinet Decree No. 238 of July 2, 1970) does not apply to numbered bank accounts, which are specifically governed by a separate Panamanian bank secrecy law (Law No. 18 of January 28, 1959), Article 5 of which provides -

> The information on coded current bank accounts referred to in the preceding article may be revealed by managers and other employees of banking institutions to investigating officers, judges and magistrates who hear criminal proceedings, and who shall hold the information in strict reserve in the event that such information is no [sic] conductive to clarifying the punishable facts [sic] under investigation.
>
> In cases in which public functionaries, whether of a judicial or administrative category, other than those mentioned in this article, request from banking institutions any information or the attachment or embargo of coded bank accounts, including probate proceedings, the bank shall not furnish the information, nor withold the funds

> or securities deposited in coded accounts, and shall reply to the request stating that it is not possible to furnish any information, even in the cases where there exist the account or the funds or securities covered by the request. [Emphasis added.]

Considering these express provisions, you were of the opinion that there was no possibility under Panamanian law of immobilizing or identifying Peoples' Temple assets in numbered bank accounts either through ordinary civil remedies (e.g., by means of attachment, sequestration, ne exeat) or under Article 65 of Decree No. 238.

Absent a suitable civil remedy, your advice was that I should "denounce" a crime - or a possible crime - to the appropriate Panamanian authorities in accordance with Articles 2007-2008 of the Codigo Judicial of Panama.

2. In discussions held with us on December 27 and 28, the Minister of Justice (Mr. Ahumada), the Minister of Planning and Finance (Mr. Gonzalez), the Chairman of the National Banking Commission (Mr. de Diego) and the Attorney General (Mr. Miranda) concurred in your opinion that the United States Government could achieve its objectives of sequestering the Peoples' Temple assets in Panama only by filing a criminal "denunciation".

All parties agreeed that Panamanian bank secrecy laws would have to be scrupulously observed. The Panamanian officials stated that the Government of Panama is prepared to take all steps permitted by law to prevent its banking system from becoming a haven for money which may have been obtained by fraud or extortion. They further expressed the view that the Panamanian deposits of the Peoples' Temple presented an unprecedented situation.

3. On December 28, 1978, I appeared before Attorney General Miranda, and formally "denounced" several possible crimes which I believe may have been committed by the Peoples' Temple, its members or Panamanian subsidiaries of the Temple. In my statement, I adverted to the fact that the fruits of several possible crimes may have come to rest in numbered bank accounts in Panama, and that a

potential of fraud or improper distribution of such funds existed unless they were to be immobilized (and identified) pending a proper judicial determination - either in Panama or elsewhere - of the rightful owners.

4. On December 28, 1978, you informed me that Attorney General Miranda had issued formal orders addressed to the Swiss Banking Corporation (SBC) and the Union Bank of Switzerland (UBS), directing them not to release Peoples' Temple assets pending further investigation of the matter by Panamanian authorities. As of the time of my departure from Panama, the two banks had not yet responded to the Attorney General's order. However, the Attorney General informed me that no one had ever challenged one of his orders during the ten years of his incumbency in office.

Furthermore, your Mr. Ferrer advised me that if the bank were to disburse funds on deposit in the accounts contrary to the Attorney General's Order - and assuming the validity of the order were to be ultimately sustained in the Supreme Court of Panama - the banks would be liable for all payments improperly made. Mr. Ferrer was of the opinion that it would be highly unlikely that the banks would take such a risk.

In addition, you informed me that it was your understanding that the banks had "frozen" the relevant accounts independently (and prior to the Attorney General's orders), and that you had no reason to believe that the banks would disburse any funds until the question of rightful ownership has been determined by the appropriate judicial authority (in the United States or elsewhere).

5. As regards Articles 2007 and 2008 of the Codigo Judicial, we agreed that under the unusual circumstances here it is imperative that we proceed in such a manner as to protect the interests not only of the United States and its nationals, but also of all other parties who might have claims against the Peoples' Temple funds in Panama - including the Government of Panama. The escheat provisions of Articles 102 and 103 of Cabinet Decree Number 238, provide as follows -

> Article (102) - Every bank must advise the Commission with regards to any assets, funds and securities held by it which remain inactive for five (5) years and which belong

to persons whose whereabouts are unknown. The Commission, after ascertaining this fact, shall order its net value to be transferred to the National Treasury.

Article (103) - The State will be obliged to return to its owner the funds mentioned in the previous article, if they are claimed within ten (10) years after the date on which they have been transferred to the State, but the restitution will be made without charging interest.

6. With respect to a possible civil recovery action in Panama, we agreed that the filing of a civil suit would be premature, considering the institution of the criminal investigation in Panama and the possible criminal and civil actions which may be initiated in the United States. (You advised me that under Panamanian law, civil proceedings would, in any event, be stayed pending completion of any criminal investigation relating to the same matters.) We agreed that the least expensive and most productive approach would be to wait until the civil courts of the United States (e.g., the Superior Court of San Francisco, California, in which the American dissolution proceedings are now pending) have had an opportunity to pass on the question of the ownership of the accounts. Depending on the outcome of these proceedings, we may decide to seek recognition and enforcement of the American judgment(s) in the courts of Panama by means of an "exequatur". I will advise you promptly concerning the status of any civil actions which may be - or which have been - filed in the United States with respect to the Peoples' Temple.

7. Because this case draws into issue interests of the United States Government, it is necessary that you obtain the approval of my office in advance of any significant actions which you may take in the name of the United States in Panama. I have already included in my "denunciation" a power of attorney to your firm. If you require a more detailed power, please furnish me the Spanish language text thereof, and I will return it to you duly executed.

For the most part, we should be able to conduct our business by mail. However, if you need to telephone me, my number in Washington is: Area Code 202/724-7179 or

724-7342. If you need to reach me during non-business hours, my home number is: Area Code 703/379-7095.

Moreover, Mrs. Chester has informed me that the Embassy will be pleased to transmit to us by telex or telephone any information which you need to get to us promptly. In addition, the Embassy will "pouch" to us any other materials which you may want to transmit. I would be grateful to you if you would please keep the Embassy informed of all developments in this matter. The Embassy is aware that in strictly legal matters you will take your instructions directly from us.

I think it would be helpful and informative if you would maintain a file of Panamanian newspaper articles which deal with the Peoples' Temple, and, more particularly, with the activities of the United States in Panama with respect thereto. I would ask that you please send us copies of such articles from time to time for our information.

8. You informed me that you have confirmed that at least two - and possibly three - Peoples' Temple corporations have been formed in Panama (i.e., Asociacion Religiosa Pro San Pedro, S.A., and Asociacion Evangelica de las Americas, S.A.) and that most of the funds in the SBC and UBS were deposited in the names of the Asociacion Religiosa Pro San Pedro, S.A You have obtained, and have furnished to me, certified copies of the articles of incorporation for both corporations. You have agreed that we will probably be able to obtain additional information concerning these corporations from the Panamanian directors thereof.

You have further undertaken to furnish me samples of the contracts which depositors enter with Panamanian banks when they open numbered accounts, together with an explanation of the terms and conditions thereof and the withdrawal powers of the various persons and entities named therein (e.g., signatories, "holders", etc.). We are particularly interested in ascertaining what laws/internal bank regulations govern such matters and how the banks distribute the proceeds of numbered accounts when the possible beneficiaries either die (individuals) or are dissolved (corporations).

9. I have furnished you copies of the articles of incorporation of the two Peoples' Temple corporations in Guyana and the parent California corporation, together with a copy of the Dissolution petition filed by the Temple in the San Francisco Superior Court on December 4, 1978.

10. I would be grateful to you if you would please furnish me the following specific information at an early date:

a) Copies of the Attorney General's December 28, 1978 Orders to the UBS and the SBC, together with copies of the banks' replies thereto, if any.

b) A brief report concerning the creation, organization and current status of any Peoples' Temple corporations which may have been formed in Panama. Your report should include a precise description of the relationship between the Peoples' Temple of the Disciples of Christ in California and the Panamanian subsidiaries. We are particularly eager to learn of the results of any discussions which you may have with the Panamanian directors of San Pedro, i.e., Messrs. Tapia and Linares.

We have just been informed that the Peoples' Temple may have formed in Panama another corporation under the name "Asociacion E.D. - Charitivable - Internationala Empressa, S.R." Could you please check on this?

c) A brief report concerning the Peoples' Temple contracts with the UBS and SBC, to include a description of how the banks proceed when depositors, or beneficiaries either die or dissolve. Can we assist the banks in any way in this matter, as by furnishing death certificates?

d) Certified copies of any documents filed, or legal proceedings initiated in, the Panamanian courts relative to this matter.

e) A list of all Peoples' Temple accounts or safety deposit boxes in either the UBS or SBC, together with the particulars thereof, to the extent such information may now be available to you as the result of my "denunciation".

f) Copies of the results of any investigation carried out by the Attorney General (I understand from your Mr. Tejeira that in Panama such investigations may be "public records").

g) A brief legal opinion concerning whether we should consider initiating a civil claim in the name of the United States in the Panamanian courts at this time. (I have received conflicting advice from your firm with respect to whether the United States can join in the criminal proceedings as a "civilly injured" party.)

This opinion should be directed toward the civil claim of the United States Government for approximately U.S.$4-million which has been expended by the United States to date in repatriating to this country - at the request of the Guyanese Government - the remains of more than 900 Americans who died at Jonestown. In particular, we would welcome your views concerning such issues as -

(1) Whether such a claim is cognizable under Panamanian law?

(2) If so, what legal theory would be advanced, e.g., repayment for burial-related expenses; contract (i.e., restitution or unjust enrichment); discharge of an international obligation?

(3) When would be the appropriate time to bring such an action?

(4) In which court would such action be brought?

(5) What problems of proof might we encounter?

(6) How long might it take to obtain a judicial resolution?

(7) What would be the potential costs of such litigation?

h) Your suggestions concerning any supplemental information which I should transmit to you in further support of my "denunciation". (I have taken steps in California to obtain sworn statements from several individuals who allege that they have been defrauded by the Peoples' Temple.)

i) Your suggestions as to whether it would be helpful to cause an American court to dispatch a "Carta Rogatoria" addressed to the "appropriate judicial authorities in Panama" in connection with the criminal (i.e., Grand Jury) investigation which is being conducted in the United States, and if so, what information should be contained therein.

j) Your opinion as to whether the UBS and SBC could, with the consent of the Attorney General, release the funds to the custody of the United States court having jurisdiction in this country over the determination of rightful ownership. In this connection, I am enclosing a copy of the "Amended Petition for Judicial Supervision of Winding up the Affairs of Peoples' Temple, a California Non-Profit Charitable Corporation, and the Distribution of its Assets", filed with the Superior Court of California on December 20, 1978.

k) Confirmation that under Panamanian corporation law, dissolution of a corporation may be ordered by a court for unlawful practices and for just cause upon demand of any stockholder (Law 9 of 1946, reenacting C. Com. 524, 531). Since under Article 14(c) of the articles of incorporation of San Pedro, all funds and assets of that corporation revert to the parent Peoples' Temple corporation in California upon dissolution, we wish to have your views as to the effect which a dissolution of San Pedro would have on the Panamanian assets under the unique circumstances here.

11. Finally, you agreed to represent the Government of the United States in this matter at your firm's normal hourly fee of $100. Although we did not discuss the billing procedure in detail, I assume that the $100 hourly figure pertains to senior partner time, and that a lesser rate will be charged for time of junior members of your firm.

In addition, I again wish to confirm that the Department of Justice may not enter into contingent-fee arrangements, or to pay legal fees based upon a percentage of the amount in issue. I suggest that your firm submit periodically (every three or six months) an itemized statement of fees and expenses, mailing it directly to:

Mr. Bruno A. Ristau
Director, Office of Foreign Litigation
Civil Division
United States Department of Justice
Washington, D. C. 20530

Before closing, I want to express, not only for myself, but also on behalf of the Department of Justice, my sincere appreciation for your prompt, courteous and effective assistance and legal advice which your firm has rendered to the United States in this matter to date. I look forward to a pleasant and successful association with your firm, and particularly with both yourself and Mr. Ferrer.

With warmest personal regards,

Sincerely yours,

James G. Hergen
Attorney
Office of Foreign Litigation
Civil Division

Enclosures (a/s)

bc: Mr. Ford, ODAP
Mr. Schiffer, OAAG
Mr. Charig, AmConsul Munich
Mr. Marks, State Dept.
Mr. Fortune, State Dept.
Mrs. Chester, AmEmb, Panama
Ms. Restani, Civil Div.
Mr. Epstein, Civil Div.
Mr. Hunter, USA Ofc, S.F.
Mr. Abbell, Crim. Div.
Mr. Chamblee, Crim. Div.
Mr. Apallas, Calif. State AG Ofc

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Before closing, I want to express, not only for myself, but also on behalf of the Department of Justice, my sincere appreciation for your prompt, courteous and effective assistance and legal advice which your firm has rendered to the United States in this matter to date. I look forward to a pleasant and successful association with your firm, and particularly with both yourself and Mr. Ferrer.

With warmest personal regards,

Sincerely yours,

James G. Hergen
Attorney
Office of Foreign Litigation
Civil Division

Enclosures (a/s)

bc: Mr. Ford, ODAP
Mr. Schiffer, OAAG
Mr. Charig, AmConsul Munich
Mr. Marks, State Dept.
✓Mr. Fortune, State Dept.
Mrs. Chester, AmEmb, Panama
Ms. Restani, Civil Div.
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